

**December 2, 2005**

**DECISION AND ORDER**

**OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Henrietta Brater

Date of Filing: November 2, 2005

Case Number: TFA-0131

On November 2, 2005, Henrietta Brater filed an appeal from a determination issued to her on October 6, 2005 by the Department of Energy's (DOE) Environmental Management Consolidated Business Center (CBC). In that determination, CBC responded to a request for documents that Ms. Brater submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. CBC determined that it had previously provided Ms. Brater with all documents in its possession responsive to Ms. Brater's request. This appeal, if granted, would require CBC to perform an additional search and release any responsive documents or issue a new determination justifying the withholding of those documents.

**I. Background**

Ms. Brater filed a request with CBC for medical, personnel, radiation exposure, and occupational and industrial records pertaining to her late husband. Letter from Ms. Brater to OHA (October 17, 2005) (Appeal Letter). CBC located 390 pages of documents responsive to Ms. Brater's request and provided her with copies of those documents. Letter from Marian Wilcox, CBC, to Ms. Brater (October 6, 2005) (Determination Letter). Ms. Brater believed CBC did not provide her with all responsive documents available and filed the present appeal. In her appeal, Ms. Brater challenges the adequacy of the search performed by CBC. Appeal Letter.

**II. Analysis**

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. United States Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. United States Department of State*, 779 F.2d 1378, 1384-85 (8<sup>th</sup> Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the

search conducted was in fact inadequate. *See, e.g., Ms. Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted CBC to ascertain the scope of the search. CBC informed us that, in responding to Ms. Brater's request, it performed a very thorough search for documents pertaining to Ms. Brater's late husband, who worked at the Fernald site from the mid-1950s to the mid-1960s. Specifically, CBC stated,

A search was performed of the Fernald Active Records and Historical Records (ARIS and HRID) Database for personnel, medical, respirator file, accident/injury and any other available information. The Dosimetry department prepared a report including exposure files, urinalysis [sic], etc. A search was also performed of the eDesk files for historical information (this is scanned copies of the older documents). The Subcontractor Database was also searched just to make sure that nothing would be missed. Also, as Ms. Brater requested, all documentation that has been provided to the Department of Labor and NIOSH has also been provided to Ms. Brater. This included raw data. Every location that could be reasonably expected to contain responsive records was searched and the best available copies (of the older documents) were provided in responsive [sic] to the request.

Electronic Mail Message from Marian Wilcox, CBC, to Diane DeMoura, OHA (November 23, 2005). Based on this information, we find that CBC performed an extensive search reasonably calculated to reveal records responsive to Ms. Brater's request and, therefore, the search was adequate. Furthermore, in her appeal, Ms. Brater does not provide any support for her assertion that additional responsive documents were available but not provided to her. Accordingly, Ms. Brater's appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on November 2, 2005 by Henrietta Brater, OHA Case No. TFA-0131, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: December 2, 2005